

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**FILED**

JOSEPH BARNETTE  
MOVANT,

OCT 29 2007

v.

CLERK U.S. DISTRICT COURT  
WEST. DIST. OF PENNSYLVANIA CASE NO. #98-00005-001-ERIE

UNITED STATES OF AMERICA  
RESPONDENT.

MOTION UNDER TITLE 18 U.S.C. § 3582(c)(2) AND TITLE 18 U.S.C. § 3553(a), AND OF THE UNITED STATES SENTENCING GUIDELINES § 1B1.10(c) AND § 1B1.11(a), FOR THE REDUCTION OF SENTENCE BASED ON GUIDELINE AMENDMENT 9, EFFECTIVE NOVEMBER 1, 2007, CONCERNING THE REDUCTION OF TWO BASE OFFENSE LEVELS, FOR (CRACK) COCAINE AMENDMENT 9.

COMES NOW, Movant, Joseph Barnette, pro se, files this Motion under Haines v. Kerner, 404 U.S. 519, Movant Barnette, request that this Motion be construed liberally by the Court because he is a layman of the law without the legal education of the judicial workings of the law.

Movant Barnette, respectfully request that this Honorable Court modify the Movant's sentence base offense level of 36, to a base offense level 34, category III, from 235-293 months to base offense level 34, 188-235 months, pursuant to the November 1, 2007, (Crack) Cocaine Amendment 9, which is retroactive according to United States Sentencing Guideline § 1B1.10(c). Movant Barnette, states also that the (Crack) Cocaine Amendment of November 1, 2007, can be classified by the Honorable Court as a "clarifying" amendment that must be applied retroactively, even if not listed in the

lBl.10(c) United States Sentencing Guideline Amendment Section. See United States v. Capers, 61 F.3d at 1109, (key number 19). The United States District Court can give retroactive effect to a "clarifying" (as opposed to substantive) amendment regardless of whether it is listed in United States Sentencing Guideline lBl.10. See, United States v. Ofchinick, 877 F.2d 251, 257 N.9 (3rd. Cir. 1989)(amendment intended to clarify the meaning of an existing guideline may be given substantial weight in determining the meaning of the existing guideline). This rule also applies when a reviewing Court is confronted with a postsentencing clarifying amendment. See, United States v. Fant, 974 F.2d 559, 564 (4th Cir. 1992). See also, United States v. Anderton, 136 F.3d 747, 751 (11th Cir 1998).

Movant Joseph Barnette, was sentenced on February 9, 1999, based on a trial conviction, on counts 1,2, and 3, having to do with (Crack) Cocaine.

Movant Barnette, has accomplished the following achievements while striving to better himself while incarcerated. The programs that he has taken advantage of are as follows:

- (1). Rppl Aids and Disease prevention;
- (2). VT Computer Applications;
- (3). Calisthenics;
- (4). VT Building Trades;
- (5). Intermediate GED;
- (6). Glover GED LV.2, M-F;
- (7). (Macon, GED level 2);
- (8). GED/c;
- (9). GED Tutoring 2;
- (10). Band;
- (11). Running a Car Dealership;
- (12). Parenting 2;
- (13). Residential/Commerical RL Esta.

See all accomplishments attached as Exhibit "A". Movant Barnette, has accomplished these extraordinary achievements because his

intentions are to become a productive and positive member of society upon his release from prison. according to Title 18 U.S.C. § 3553(a) factors, Movant Barnette, informs the Honorable Court of his positive progress, with a request that he be sentenced to the low end of 188 months, base offense level 34, category III. Movant Barnette, at this moment continues to take full advantage of all of the necessary programs available to him.

Movant Barnette, request re-sentencing from the Honorable Court in person according to United States Sentencing Guideline § 1B1.11(a), to allow him to argue any other appropriate changes in the Guidelines of his sentence since the date of his last sentence, particularly his Title 18 U.S.C, § 3553(a) achievements. Movant Barnette, request that he be returned to the United States District Court in the Western District of Pennsylvania for re-sentencing at the discretion of the Honorable Court.

CONCLUSION

Movant Barnette, hopes and prays that the Honorable Court for the Western District of Pennsylvania grant him this two level reduction, due to the November 1, 2007, (Crack) Cocaine Amendment.

Dated:

Respectfully submitted,

s/   
Joseph Barnette #10733-068  
United States Penitentiary  
P.O. Box 150160  
Atlanta, GA 30315

CERTIFICATE OF SERVICE

I, Joseph Barnette, do hereby certify that I have this same day served the opposing party to this action with a true and correct copy of the attached pleading in case number 98-00005-001-ERIE, by mailing the same to them in the U.S. Mailing Service with adequate pre-paid postage attached and addressed as follows:

Assistant United States Attorney  
John J. Tracilla  
100 State Street, Suite 302  
Erie, PA 16507

Clerk of the Court  
United States District Court  
For the Western District of Pennsylvania  
P.O. Box 1820  
Erie, PA 16507

The Honorable Sean J. McLaughlin  
United States District Court  
Judge, for the Western District  
of Erie Pennsylvania  
Erie, PA 16507

Done this 31 day of October, 2007.

s/ Joseph Barnette  
Joseph Barnette #10733-068  
United States Penitentiary  
P.O. Box 150160  
Atlanta, GA 30315

E X H I B I T "A"

ALL CERTIFICATES

E X H I B I T "A"

ALL CERTIFICATES

ATLAK \* INMATE EDUCATION DATA \* 10 09 2007  
 PAGE 001 OF 001 \* TRANSCRIPT \* 15:17:02

REGISTER NO: 10733-068 NAME...: BARNETTE FUNC: PRT  
 FORMAT....: TRANSCRIPT RSP OF: ATL-ATLANTA USP

----- EDUCATION INFORMATION -----  
 FACL ASSIGNMENT DESCRIPTION START DATE/TIME STOP DATE/TIME  
 ATL ESL HAS ENGLISH PROFICIENT 06-07-2000 1341 CURRENT  
 ATL GED HAS COMPLETED GED OR HS DIPLOMA 09-15-2004 1322 CURRENT

----- EDUCATION COURSES -----  
 SUB-FACL DESCRIPTION START DATE STOP DATE EVNT AC LV HRS  
 ATL ABDOMINAL EXERCISE PROGRAM 07-18-2007 09-22-2007 P C P 36  
 ATL NATIONAL FIT PHY TRAIN 04-24-2007 07-14-2007 P C P 10  
 ATL RPP1 AIDS & DISEASE PREVENTION 05-28-2006 05-31-2006 P C P 1  
 THA VT COMPUTER APPLICATIONS 2-330 10-21-2005 04-12-2006 P C C 360  
 THA CALISTHENICS 08-15-2004 02-15-2005 P C P 40  
 THA VT BUILDING TRADES 0745-1030 10-12-2004 03-07-2005 P C C 500  
 THA INTERMEDIATE GED 0900-1030 03-31-2003 11-21-2003 P W I 98  
 BUT GP CLOVER GED LV.2,M-F, 1230-230 08-23-2002 09-30-2002 P W I 68  
 BUT GP (MACON, GED LEVEL 2,12:30) 02-22-2002 08-01-2002 P W J 360  
 CUM GED/C 1230 07-28-2000 10-05-2001 P W I 114  
 CUM GED TUTORING 2 01-12-2001 03-23-2001 P C P 30  
 CUM BAND 01-04-2001 01-04-2001 P C P 1  
 CUM RUNNING A CAR DEALERSHIP 10-11-2000 12-17-2000 P C P 20  
 CJM PARENTING 2 10-02-2000 12-19-2000 P C P 30  
 CJM RESIDENTIAL/COMMERCIAL RL ESTA 10-02-2000 12-15-2000 P C P 25

----- HIGH TEST SCORES -----  
 TEST SUBTEST SCORE TEST DATE TEST FACL FORM STATE  
 ABLE LANGUAGE 6.0 10-30-2001 BUT F  
 NUMBER OPR 13.0 10-30-2001 BUT F  
 PROB SOLV 11.9 10-29-2001 BUT F  
 READ COMP 13.0 10-29-2001 BUT F  
 SPELLING 8.6 10-30-2001 BUT F  
 VOCABULARY 9.3 03-10-2003 THA F

G0000 TRANSACTION SUCCESSFULLY COMPLETED